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Trump administration finalizes lead dust rule, advances lead drinking water rule

Annie Snider, Politico Pro

<https://subscriber.politicopro.com/energy/whiteboard/2020/12/trump-administration-finalizes-lead-dust-rule-advances-lead-drinking-water-rule-3986022>

The Trump administration finalized a rule on Monday to tighten standards for the amount of lead allowed in dust on floors and windowsills following lead abatement work.

Separately, the White House wrapped up interagency review Friday of the Trump administration's update to regulation governing lead in drinking water, a signal that the rule could be finalized soon.

Lead dust rule: The limits set by the finalized rule match those proposed by EPA in June. The rule drops the limit for dust on floors from 40 micrograms per square foot to 10 micrograms, and the limit for dust on window sills from 250 micrograms to 100 micrograms.

Those levels match the ones set in a 2019 regulation that lowered the hazard limit for lead dust, which comes from lead-based paint in older homes and buildings. The agency is under a court-mandated timeline to finalize the rule that environmental groups petitioned EPA in 2009 to update.

"For too long, many children, especially those in low-income communities, have been exposed to unacceptable levels of lead," EPA Administrator Andrew Wheeler said in a statement, saying the "overdue regulation" is "yet another example of the Trump Administration's commitment to reduce sources of lead exposure and to provide a healthier environment for our children."

Legal challenges to the 2019 rule — including that it set the levels too high — are pending in the U.S. Court of Appeals for the 9th Circuit. During oral arguments in October, the panel of judges had harsh words for EPA's slow pace of action, but appeared more divided on the question of whether the limits were too lax.

The drinking water rule: Wheeler has also touted the Trump administration's work to update the three-decade-old Lead and Copper drinking water rule, and was hoping to finalize it ahead of the November election. But the rule cuts against the Trump administration's deregulatory agenda and it was held up in interagency review. It has been unclear whether it would be finalized before President-elect Joe Biden takes office in January.

Democrats, environmentalists and the agency's external science advisers largely saw the proposed version of the rule as a mixed bag. It would require mapping of lead service lines across the country and additional planning for their removal, but did not change the requirements for when they must be replaced -- the central demand from greens and public health advocates.

EPA did not immediately respond to a request for comment on its plans for finalizing the drinking water rule.

Clean-Up Standards for Removing Lead-Based Paint Lowered by EPA

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/clean-up-standards-for-removing-lead-based-paint-lowered-by-epa?context=search&index=7>

The EPA is lowering the lead-dust levels that determine whether people can safely reoccupy their homes and childcare-facilities after lead-based paint is removed.

The Environmental Protection Agency's rule on Monday (RIN: 2070-AK50), lowered the "post-abatement clearance levels" from 40 to 10 micrograms per square foot on floors and from 250 to 100 micrograms per square foot on window sills for homes and child care facilities. Those levels match the EPA's 2019 updated standards describing volumes of lead-containing dust that endanger children's developing brains.

"Through my experience working as a pediatric neurosurgeon, I've seen firsthand the devastating impact lead exposure can have upon the health of children," Housing and Urban Development Secretary Ben Carson said in a statement accompanying the EPA's rule.

- When the EPA proposed the rule, the agency predicted it could affect up to 27,500 homes and facilities nationwide.
- Judges from the U.S. Court of Appeals for the Ninth Circuit in October criticized the EPA for its years-long delay in deciding whether to revise its standards for lead in soil.
- The Sierra Club, California Communities Against Toxics, and other environmental groups are challenging the EPA's 2019 lead-hazard standard, saying it's too high to protect the public.
- The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

Chemical Makers' Fees Would Increase Under Proposed EPA Rule (1)

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/chemical-makers-fees-would-increase-under-proposed-epa-rule?context=search&index=3>

- Higher fees reflect updated higher costs, EPA says
- Scope of fee payers narrowed from original 2018 rule

The EPA proposed on Monday increasing the fees chemical manufacturers must pay the agency as it oversees the safety of their products, while permanently exempting certain manufacturers and importers from some of those fees.

The Environmental Protection Agency's proposed rule (RIN: 2070-AK64) would revise its 2018 Toxic Substances Control Act fee regulation. The higher fees reflect the actual costs the EPA has experienced in its first four years implementing the 2016 amendments to TSCA, the agency said.

The TSCA amendments require chemical manufacturers to pay fees to help the agency recoup about 25% of its costs carrying out certain chemical analyses.

Chemical manufacturers would pay higher fees for chemical risk evaluations; an additional fee related to EPA orders requiring them to provide new toxicity, exposure, or other data; requests to learn whether a chemical is on the confidential list of substances made in or imported into the U.S.; and notices they give the agency when they've begun to make or import a new chemical.

Manufacturers producing chemicals solely for export would have to pay fees when the agency selects their chemical for risk evaluation. Such manufacturers have been exempt from the fees established by the agency in 2018 and due Jan. 2.

The EPA didn't propose increases in the fees companies pay for its reviews of new chemicals and industrially-produced microbes. Those reviews determine if the substances can be made in or imported into the U.S. for the first time.

Fee Exemptions

The EPA proposed to exempt certain chemical manufacturers from fees. Exempted companies include those making or importing chemicals solely for research and development, and ones that manufacture a chemical that is produced to make another chemical and that disappears as that new chemical is generated.

Manufacturers that produce less than 2,500 pounds of a chemical the EPA is reviewing for potential risks also wouldn't have to contribute to the risk evaluation fee.

And three exemptions the EPA temporarily put in place in March 2020 would be made permanent through a memorandum, under the proposed rule. The exemptions apply to companies that produce a particular chemical as a byproduct as they manufacture something else; import it within manufactured goods, such as cars or computers; or produce or import that chemical as an impurity in other compounds.

Fee Calculations

Under the current and proposed rules, manufacturers of the same chemical can form groups that decide among themselves how much each will pay after the EPA decides to evaluate their chemical's risks.

If they don't form such a group, the proposed rule would revise the process the EPA uses to calculate the fees. Under the EPA's proposal, small businesses would still get the discounted chemical risk evaluation fee they currently qualify for. But the EPA would divide the fee for larger companies based on the volume of the chemical they produced.

Currently, EPA divides the fee equally among the large producers. The EPA invited comment on this idea.

The revised rule wouldn't affect fees due Jan. 2 from chemical manufacturers that make one or more of the 20 chemicals in the second batch of compounds the EPA has begun to evaluate for possible risks.

(Updated with additional reporting throughout.)

EPA Releases Guidance For PFAS Destruction, Citing Uncertainties, Gaps

Suzanne Yohannah, Inside EPA

<https://insideepa.com/daily-news/epa-releases-guidance-pfas-destruction-citing-uncertainties-gaps>

EPA has issued for public comment a long-awaited interim guidance on disposal and destruction methods for per- and polyfluoroalkyl substances (PFAS) that outlines currently available technologies but declines to endorse or dismiss any, including incineration, while noting uncertainties and knowledge gaps that still need to be addressed.

The agency released the congressionally mandated guidance Dec. 18 -- just shy of Congress' deadline for issuing the guidance -- and will take comment for 60 days following its publication in the Federal Register. EPA says it will then incorporate comments into a revised document. The document examines three disposal/destruction technologies: thermal treatment, landfilling and underground injection.

In a Dec. 18 press release, EPA Administrator Andrew Wheeler touted the document, saying, "With this interim guidance, EPA is providing important scientific information on available technologies that can assist with the destruction and disposal of PFAS."

He added, "This action is a critical part of our efforts to increase the understanding of PFAS and support our federal, state, tribal and local partners as we address these emerging chemicals of concern."

But the Sierra Club -- which is currently suing the Defense Department in a bid to stop incineration of its stockpile of PFAS-based firefighting foams, arguing evidence is lacking that incineration can destroy PFAS -- says in a statement that the interim guidance "highlights the fact that EPA does not have the monitoring methods or data to conclude that any of these methods are safe ways to contain PFAS wastes."

The group is urging the incoming Biden administration to block all disposal of PFAS waste until it is able to better regulate the practice.

Sierra Club is “eager to see meaningful regulation of these wastes in the Biden Administration,” says Sonya Lunder, the group’s senior toxics policy advisor. “EPA should halt PFAS disposal in incinerators, landfills, and deep wells until we have strong rules and laws to ensure the practices are safe.”

EPA acknowledges such lack of data. “Performance and testing data -- including data on destruction and removal of PFAS in hazardous waste combustors and associated pollution controls, and long-term performance data for landfills and deep well injection -- are insufficient to support more specific guidance at this time,” the document says.

EPA adds that it “intends to fill gaps in knowledge associated with potential releases from these destruction and disposal methods before issuing further guidance.”

Congress required the interim guidance in the fiscal year 2020 National Defense Authorization Act (NDAA), which tasked EPA with writing a guidance for destruction of PFAS and materials containing the substances, including firefighting foam; soil and biosolids; textiles; spent filters and other waste from water treatment; landfill leachate; and solid, liquid or gas waste streams from manufacturing facilities.

The NDAA conference language also called for EPA in its guidance to take into consideration the potential for releases of PFAS during destruction or disposal, such as through volatilization, air dispersion or leachate, and potentially vulnerable populations near destruction or disposal sites. Congress also told EPA that the document should provide guidance on testing and monitoring air, effluent and soil near disposal/destruction sites for releases.

Disposal Options

The guidance appears limited in what it does -- as it does not endorse any particular technologies although it does suggest disposal/destruction options, ordering them in terms of lower uncertainty to higher uncertainty, suggesting interim storage of 2-5 years if immediate destruction of the PFAS materials is not imperative. The guidance also notes that it does not set what concentrations of PFAS in waste or other materials would necessitate destruction or disposal.

It lists interim storage, permitted deep well injection for liquid-phase waste streams only, permitted hazardous waste landfills and solid waste landfills with composite liners and leachate collection and treatment systems in that order as among the technologies with lower uncertainty.

In order to reduce uncertainties with managing the migration of PFAS into the environment, “interim storage may be considered for PFAS or PFAS-containing materials before” other options, such as hazardous waste combustors or other thermal treatment methods, EPA says.

But the guidance also does not rule out incineration, despite strong opposition from environmentalists, who have lamented an absence of options for final destruction of PFAS and questioned incineration’s capability to truly destroy the chemicals, which have strong carbon-fluorine bonds.

“If entities determine, after considering this guidance and the uncertainties discussed herein, that certain PFAS waste nonetheless currently needs to be treated in hazardous waste combustors, it is important that the manager of PFAS materials provide the hazardous waste combustion facility with the relative PFAS concentrations for these materials,” the guidance says. It suggests the PFAS-material manager work with the combustion facility, state and EPA to develop protocols for monitoring and emission testing, but says these are not a precondition.

On combustion technologies, EPA says that these “can potentially achieve temperatures and residence times sufficient to break apart the PFAS contained in the waste stream being thermally treated,” but also says that it lacks emission characterizations from combustors when they burn PFAS, and “is working to develop measurement methodologies as

well as gather information to conclude whether potential products of incomplete combustion (PICs) are adequately controlled.”

It says “[h]azardous waste or municipal solid waste landfills are available, feasible, and effective, to varying degrees, disposal options for PFAS and PFAS-containing materials.” But, it notes key uncertainties are that even with controls such as leachate and gas collection systems, “the proper management of landfill gaseous and liquid releases needs to be applied for municipal solid waste and hazardous waste landfills to minimize PFAS migration into the environment.”

Class 1 deep well injection is also a feasible and effective method for disposing of liquids and minimizing migration of PFAS, EPA says. But it notes the limited number of wells now receiving PFAS and says location, waste transportation and associated costs “may significantly limit the practicability of this disposal option.”

In examining the vulnerability of populations to PFAS exposure, EPA says such groups “could include people living near a facility that manufactures PFAS, or those living near and using PFAS-contaminated environments (e.g., drinking water, fishing, hunting, and recreation). Site-specific data on PFAS releases and exposures may be needed to understand such complex interactions and co-exposures,” it says. It also says in response to environmental justice mandates, EPA has existing “tools, methods, and approaches to identify and assess the risks of potentially vulnerable populations.”

In the press release, the agency says the guidance also “captures the significant information gaps associated with PFAS testing and monitoring and identifies specific research needs to address the FY20 NDAA requirements.” -- Suzanne Yohannan (syohannan@iwpnews.com)

EPA Readies Final PBT Rules As Industry Braces For Stringent Limits

David LaRoss, Inside TSCA

<https://insideepa.com/tsca-news/epa-readies-final-pbt-rules-industry-braces-stringent-limits>

EPA is poised to issue as soon as Dec. 21 final TSCA risk management rules governing five persistent, bioaccumulative and toxic (PBT) chemicals, with industry bracing for the measures to be significantly stricter than what the agency proposed given recent agency policies adopting tougher approaches than their draft versions.

The final PBT rules, which EPA is required to issue by Dec. 22 under section 6(h) of the reformed Toxic Substances Control Act (TSCA), cleared White House Office of Management and Budget review on Dec. 18, according to the office’s website.

But in a sign that industry is preparing for the rules to be stricter than what the agency proposed, one industry lawyer expects officials may opt to limit the manufacture and use of all five PBTs, rather than only four as EPA originally sought.

EPA in a joint 2019 proposal sought to limit or ban the “processing and distribution in commerce” of four PBTs, subject to several exceptions, with no new limits on a fifth -- hexachlorobutadiene (HCBD), which is used to manufacture rubber compounds and lubricants, and as a solvent.

The agency “did not identify any practicable ways of further reducing human or environmental exposure to the chemical substance,” the 2019 proposal said.

But Erik Baptist, a former top EPA lawyer on TSCA issues who is now a partner at the Wiley Rein law firm, wrote in a recent blog post that companies should be ready for EPA to reverse course on the HCBD proposal and instead choose to limit at least some uses of the substance, based on the trend set in several chemical evaluations where the agency tightened final versions in response to criticism of initial proposals seen as too lenient.

“Given the number of times EPA has changed direction on the first 10 risk evaluation chemicals, we would not be surprised to see a final rule that includes some regulation of HCBD, even though EPA initially proposed not to issue any restrictions on the chemical substance,” Baptist wrote.

For instance, EPA's final evaluation of several related flame retardants, including hexabromocyclododecane (HBCD), dropped the proposed finding that the chemicals pose no unreasonable risk and instead identified six uses with unreasonable risks requiring regulation.

It also abandoned the proposal's assumption that all workers dealing with the substances would use personal protective equipment, which environmentalists said was out of line with real-world practice and workplace safety rules.

That precedent could signal that EPA is willing to consider banning at least some uses of HBCD, in addition to potentially tightening the restrictions on the other four identified PBTs: phenol; isopropylated phosphate, or PIP (3:1); decabromodiphenyl ether (DecaBDE); 2,4,6-tris(tert-butyl)phenol (TTBP); and 2,4,6-tris(tert-butyl)phenol (TTBP).

Moreover, the PBT rules will be the first chemical-management regulations EPA has issued under the reformed TSCA, and thus will set a precedent for other risk management rules the Biden administration must craft to govern chemicals that have gone through the full evaluation process -- a precedent that environmentalists hope will be as stringent as possible.

But while environmental and community groups have urged EPA to take a more protective approach than it proposed, several industry groups are pushing for expanded exemptions from the proposed limits that would apply to "critical uses" of certain chemicals, setting up likely litigation if the agency grants those requests.

Critical Uses

Most prominently, the chemical companies FujiFilm and Hempel filed separate requests over the summer for critical use exemptions from any limits on PIP, 3:1, which Hempel argued is necessary to produce flame-retardant coatings that protect the infrastructure of industrial facilities.

"Hempel brings this request out of concern that a ban would have a far-reaching affect, affecting several manufacturers, including Hempel's competitors, and reducing availability of effective intumescent coatings needed for fire safety," the company said in a July 2 letter to EPA.

However, environmental groups have already warned the agency against granting any such requests without going through a new notice-and-comment process first, arguing that the Administrative Procedure Act requires public input before issuing a waiver and noting that the comment period on the PBT proposal closed in 2019.

"The two exemption requests were not included in EPA's July 2019 proposal and have not been subject to public comment," the environmental groups Earthjustice, the Natural Resources Defense Council, Environmental Health Strategy, and Safer Chemicals Healthy Families argued in a joint Aug. 27 letter.

"Thus, there has been no opportunity for the public to address whether the two requests meet the stringent exemption criteria in section 6(g) and what conditions should be placed on any exemptions to protect public health and the environment."

Any new comment period would push the deadline for final action on the requests into the Biden administration -- which would also be responsible for defending litigation over the imminent rules, and might seek voluntary remand of critical-use waivers or other elements that Democrats oppose. -- David LaRoss (dlaross@iwpnews.com)

Biden Urged To Bolster CSB After FY20 Report Shows Limited Action

David DaRoss, Inside TSCA

<https://insideepa.com/tsca-news/biden-urged-bolster-csb-after-fy20-report-shows-limited-action>

The Chemical Safety and Hazard Investigation Board's (CSB) new report on its work in fiscal year 2020 shows few concrete results over the year, including just one completed investigation and no new recommendations for action, spurring calls from environmentalists for President-elect Joe Biden to reinvigorate the agency.

CSB on Dec. 17 released its FY20 "Performance and Accountability Report" detailing its overall activity for the year, performance metrics and financial data. In the current year that activity includes a single final investigation, of a 2017 pressure vessel explosion in Philippi, WV, and no recommendations to other agencies, though the report says it has also "made significant progress on 16 open investigations."

But the report immediately drew an attack from the environmental watchdog group Public Employees for Environmental Responsibility (PEER), which touted the new statistics as further proof that CSB has languished under the Trump administration.

"Fiscal year 2020 appears to be the first in the agency's 23-year history when no new safety recommendations were issued, compared to a prior average of about 38 per year since the agency was established," PEER said in a Dec. 17 statement.

The group links that drop in output to President Donald Trump's efforts to eliminate CSB, including unsuccessful proposals to zero-out its funding in annual budgets and failing to nominate officials to serve on four of five open board seats.

The board currently has just one Senate-confirmed member, Chairwoman Katherine Lemos,

"As president, Trump has not succeeded in eliminating the CSB but he has succeeded in neutering it," PEER General Counsel Paula Dinerstein said in the Dec. 17 statement.

And in response to questions from Inside TSCA, Jeff Ruch, PEER's Pacific director, said Biden should take steps to reverse that process quickly after entering office.

"Certainly filling the CSB (and naming a new chair) would be a start," he said, but added that there are also broader regulatory steps that the White House and EPA -- under newly announced Administrator-designate Michael Regan -- could take to bolster protections from chemical accidents.

Regulatory Action

Specifically, Ruch said, a bolstered CSB should return to its practice of making recommendations "embracing regulatory changes needed," and tighten the first-time "Accidental Release Reporting" rule it released in February.

That rule "requires prompt reports to the CSB from owners and operators of facilities that experience an accidental release of a regulated substance or extremely hazardous [substance] that results in a death, serious injury or substantial property damage," according to the agency's summary.

But PEER and other environmental groups have attacked it as too weak and called for a broader reporting mandate that would include more data on areas affected by chemical spills as well as the substances released in each incident. The extra data would allow CSB or citizen groups to compile databases of accidents "to analyze trends, patterns and vulnerabilities to inform actions to prevent future accidents," PEER argued in its response to the rulemaking.

As a candidate, Biden made no campaign promises specifically related to the CSB, but backed a bill that would expand community notice requirements in the Emergency Planning and Community Right-to-Know Act to include mandatory public meetings where facilities would brief local residents on hazardous-chemical risks from the site.

Ruch also said the new administration should reinstate mandates for facilities to adopt inherently safer technology, after the Trump EPA rolled back that requirement in a rule now under legal challenge.

But more broadly, he said, PEER's main request to Biden on CSB operations is to bolster the agency's capacity to respond to accidents and chemical releases. "For us, the test for Biden will be when the first major refinery accident occurs will there be a federal response beyond emergency cleanup," he said.

EPA's Inspector General (IG) -- which also oversees the CSB -- recently warned in its annual report on the board's management challenges that it may lack the staff resources needed to respond to a "high-consequence incident," especially after scaling back incident investigations during the COVID-19 pandemic.

The IG also said the CSB appears to lack regulatory authority to act with a "quorum of one," meaning any formal action taken with Lemos as the sole board member could be legally questionable.

However, Lemos herself rejected that argument in an interview with Inside TSCA. "We have never been asked as an agency to act as a quorum of one but there is no question about the legality of it," she said. -- David LaRoss (dlaross@iwpnews.com)

Amid Uncertainty, Congress Seeks To Ensure PFAS R&D Is Coordinated

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/amid-uncertainty-congress-seeks-ensure-pfas-rd-coordinated>

Faced with major data gaps and strong demand for regulation, Congress is stepping up efforts to ensure federal research on per- and polyfluoroalkyl substances (PFAS) is coordinated, creating an interagency panel to guide federal research with a goal of developing safer alternatives, and securing a watchdog inquiry to advise on the effort.

Both the House and Senate have overwhelmingly approved the fiscal year 2021 National Defense Authorization Act (NDAA) which includes language in section 332 creating an interagency body, to be led by the White House Office of Science and Technology Policy (OSTP), to co-ordinate federal PFAS research and craft a federal action plan to identify and remedy research gaps concerning the chemicals.

Among the action plan's goals is a mandate to "identify cost-effective alternatives to PFAS that are designed to be safer and more environmentally friendly."

However, President Donald Trump is threatening to veto the legislation over unrelated provisions, setting up a showdown with lawmakers who approved the final conference report by strong veto-proof margins.

In addition to the legislation, the Government Accountability Office (GAO) in September quietly agreed to a request from the House science committee to provide advice on ways the federal government could "build on" EPA's PFAS Action Plan "by identifying and investing in cross-cutting, interagency research and development (R&D) opportunities to address the environmental and health effects of PFAS, a committee source tells Inside TSCA.

Such efforts come as lawmakers face continuing calls to regulate PFAS uses and remediate legacy releases even as agency officials struggle to address a wide range of scientific data gaps on the chemicals' risks, exposures and a host of other issues.

During a workshop convened by the National Academy of Sciences (NAS) in late October on behalf of EPA and other agencies, speakers highlighted limits in their research on a range of potential disease outcomes, exposure pathways, mechanisms of action and methods to assess PFAS mixtures.

As a result, many called for more research. "The greatest challenge overall is the accurate reconstruction of exposure, largely because we don't have long-term historical measurements," David Savitz, a professor of epidemiology at Brown University, told the workshop. "The interest is only in the past 10 or 15 years, so there are not data that go back further than that."

But political leaders also asked the panel to help the agencies determine if they need to “course correct” and whether to prioritize their focus. “Are we, the federal government, conducting the right human health research? Are we asking the right questions? If not, please point out any deficiencies, and help us course correct,” David Dunlap, the top political appointee in EPA’s research office, told the NAS workshop Oct. 26.

“With that advice, we will also be interested to hear what you consider the highest priority,” he added.

PFAS Research Plan

Such advice and coordination are considered essential after public divisions emerged between agencies over the risks posed by some PFAS. For example, in 2018, EPA and the Defense Department (DOD) temporarily blocked the release of a draft toxicological profile from the Agency for Toxic Substances and Disease Registry (ATSDR) that showed greater risks from PFAS than EPA had assumed when it crafted health advisory levels for PFAS in drinking water.

While ATSDR subsequently took comment on the draft, ATSDR Director Richard Breyse told the October workshop that the agency is not likely to finalize the draft toxicological profile anytime soon. “We’re looking at the literature as it evolves, and when new information is available, we will reconsider our toxicological profile, the numbers that we have in this draft document, and whether there’s a need for additional numbers,” he said.

Under the provisions of the NDAA, the inter-agency group must, within one year of enactment, “develop and make publicly available a strategic plan for Federal support for PFAS research and development,” to be updated at least once every three years.

The legislation requires that the plan identify “all current federally funded PFAS research and development,” as well as all such research having taken place in the last three years. It also requires the plan to identify “scientific and technological challenges that must be addressed to understand and to significantly reduce the environmental and human health impacts of PFAS.”

It seeks “development and deployment of safer and more environmentally friendly alternative substances that are functionally similar to those made with PFAS.”

It also requires identification of “methods for removal of PFAS from the environment; and methods to safely destroy or degrade PFAS.”

While the group will be led by OSTP, other agencies included in the group include EPA; the National Institute of Environmental Health Sciences; ATSDR; the National Science Foundation; DOD; the National Institutes of Health; the National Institute of Standards and Technology; the National Oceanic and Atmospheric Administration; the Department of the Interior; the Department of Transportation; the Department of Homeland Security; the National Aeronautics and Space Administration; the National Toxicology Program; the Department of Agriculture; the U.S. Geological Survey; the Department of Commerce; the Department of Energy; the Office of Information and Regulatory Affairs; the Office of Management and Budget; as well as a representative from any agency that OSTP “finds appropriate.”

The group will be co-chaired by the director of OSTP, as well as one representative from a member agency, selected by the OSTP director and rotated biannually. -- Diana DiGangi (ddigangi@iwpnews.com)

Biden's EPA pick has a mixed record on PFAS

EA Crunden, Ariel Wittenberg & Hannah Northey, E&E News

<https://www.eenews.net/stories/1063721097>

Environmental groups and communities grappling with contamination from so-called forever chemicals have mixed feelings about President-elect Joe Biden's pick for EPA administrator.

If confirmed to lead EPA, Michael Regan will have the chance to set national drinking water standards for per- and polyfluoroalkyl substances (PFAS), in addition to designating the substances as hazardous under Superfund law and reducing industrial discharges.

Regan has experience dealing with PFAS from his time running North Carolina's Department of Environmental Quality.

As the state's top regulator, Regan steered an agreement with Chemours Co. — a spinoff of DuPont — over contamination of GenX, a type of PFAS, in the Cape Fear River. That agreement requires Chemours to treat PFAS contamination at four areas, beginning this past November. The company must also construct a surface barrier and a groundwater system removing 99% of PFAS by March 2023 (Greenwire, Aug. 14).

Many environmental advocates, including the Environmental Defense Fund, where Regan previously worked, say he is well-suited for the EPA gig because of his experience dealing with Chemours, especially as Biden is under significant public pressure to address PFAS contamination (Greenwire, Nov. 10).

"Few people know more about PFAS and the public health emergency posed by these toxic 'forever chemicals' than Michael Regan," said Environmental Working Group President Ken Cook in a statement welcoming Regan's nomination.

Indeed, the Biden transition team statement announcing Regan's nomination specifically highlights his work on PFAS, saying Regan's "subject matter expertise in the realm of environmental, energy, economic, and equity issues is apparent in his lifelong record of public service."

But some say Regan didn't push Chemours far enough and argue he should have done more to protect public drinking water sources.

"I'm not thrilled with Regan's performance on the Chemours consent order. We really need someone heading up the EPA who will take PFAS contamination order seriously, and hold these companies liable for all the pollution they caused," Public Employees for Environmental Responsibility's Kyla Bennett, who used to work on enforcement in EPA's New England region, wrote in an email. "That consent order simply did not go far enough."

Indeed, when the agreement was announced, several local North Carolina groups were quick to criticize it.

One major source of contention is that the consent order with Chemours focuses on upstream contamination. That means private well owners close to the company's plant benefited, but many communities reliant on public municipal water systems still struggling to remove the chemicals from drinking water say the deal is unfair.

"We trusted our local government. We trusted our state regulators. We trusted our federal laws. We trusted each of these entities were doing their jobs to uphold existing laws and protect us from irresponsible corporations," Clean Cape Fear said in an April statement. "This current corrective action plan falls way too short considering the proportion of harm committed by DuPont and Chemours."

After news of Regan's nomination broke, Clean Cape Fear members said that, while they don't oppose his nomination, North Carolina did not do enough on the issue.

"That failure rests across multiple agencies and branches of government," the group said, adding that if Regan is given space by the Biden administration to address PFAS contamination, "we believe he is more than qualified to lead the way."

"Our expectations are as high as the PFAS levels in our tap water," the group said.

Critics offer nuance around Regan's record

Some who have been critical of Regan's leadership on PFAS also acknowledge the challenges he has faced, given stiff opposition from North Carolina's GOP-controlled Legislature and other hurdles.

Emily Sutton, the Haw Riverkeeper, said Regan's ability to act was somewhat hamstrung by North Carolina law. He appointed many "incredible leaders" to NCDEQ's Environmental Justice and Equity Advisory Board, she said, but that body didn't have the authority it needed to make changes on PFAS.

"I've been disappointed by their lack of authority and the way DEQ has failed to address PFAS across the state," she said. "But a lot of that is due to a Legislature that continues to cut funding for DEQ."

There is PFAS contamination throughout the Haw River watershed, a tributary of the Cape Fear River and a source of drinking water for numerous communities — some with the highest levels of contamination in the state. Regan's firsthand experience and understanding of that struggle, as well as the research it has generated, will be good to have at the helm of EPA, Sutton said.

"He's extremely knowledgeable, but he wasn't given the tools to do anything," she elaborated. "We are glad and encouraged that someone who really understands the seriousness of this issue is in that federal role to lead the EPA."

Some in North Carolina expressed reluctance about publicly criticizing Regan's record, as they continue to work with NCDEQ on PFAS issues. One local community member who asked not to be named for those reasons said Regan had achieved notable victories but ultimately failed to provide affected areas with "satisfactory" help in their fight against Chemours.

"In the arena of PFAS, there are other states and other leaders that are being far more aggressive than North Carolina," they said, adding that if addressing PFAS contamination is a priority for the Biden administration, "then there are other states that have been leading the way."

Other organizations kept their comments brief. Dana Sargent, executive director for Cape Fear River Watch, said simply via email that the group "looks forward to working with Sec. Regan, if he is confirmed."

Multiple community groups said they hope to see significant action on PFAS under the Biden administration. In addition to setting a maximum contaminant level for drinking water and taking action under Superfund law, groups say they also hope to see an emphasis on health assessments and a divestment from contracts with companies caught violating discharge permits. Another priority for the Biden administration, they said, should be regulating PFAS as a class, rather than as individual chemicals.

Some entities that would be affected by such regulations offered initial congratulations to Regan. Thom Sueta, a spokesperson for Chemours, said in a statement that the company has "worked closely" with Regan "to put in place a robust approach" to PFAS contamination.

"Should he be confirmed as EPA Administrator, we look forward to working with him in that capacity, and will continue to voluntarily collaborate with EPA staff on science-based regulation and actions that are forward-thinking," said Sueta. "We encourage others to do the same."

The American Chemistry Council, which represents manufacturers of PFAS and other chemicals, also issued a statement congratulating Regan. "We have been and remain committed to working constructively with EPA and other federal agencies under every presidency, and we look forward to engaging with the incoming administration on key regulatory issues," said ACC President and CEO Chris Jahn.

EPA issues guidance on PFAS destruction, disposal

E A Crunden, E&E News

<https://www.eenews.net/stories/1063721125>

This story was updated at 4:40 p.m. EST.

EPA released interim guidance on the destruction and disposal of so-called forever chemicals, in a move likely to spark further controversy around how the agency has handled the issue.

EPA today announced the latest in a series of actions on per- and polyfluoroalkyl substances (PFAS) under the Trump administration's PFAS Action Plan. The new guidance outlines the current science available on techniques and treatments for dealing with PFAS — toxic chemicals associated with diseases like cancer.

EPA's guidance addresses a variety of media including aqueous film-forming foam (AFFF), which has been used by the Defense Department for fire suppression, as well as soil and biosolids, consumer goods like textiles, and landfill leachate. Also included are spent filters from PFAS water treatment, as well as solid, liquid or gas waste streams from facilities using or manufacturing PFAS.

Advertisement

"With this interim guidance, EPA is providing important scientific information on available technologies that can assist with the destruction and disposal of PFAS," said EPA Administrator Andrew Wheeler in a statement.

Wheeler added that the guidance "is a critical part of our efforts to increase the understanding of PFAS and support our federal, state, tribal and local partners as we address these emerging chemicals of concern."

The agency presents three technologies deemed effective and commercially available: thermal destruction, and both landfiling and underground injection as disposal options. EPA acknowledges that "significant uncertainties" remain regarding potential migration of PFAS into the environment.

Regarding risks, EPA proposed interim storage of PFAS-laden waste until more effective technology is developed.

After that, the agency suggests permitted deep well injection limited to liquid waste streams, followed by placement in permitted hazardous waste landfills, or landfiling in a solid waste landfill. Hazardous waste combustors (including commercial incinerators) and other thermal treatments are the final recommendations.

The fiscal 2020 National Defense Authorization Act called for the guidance on PFAS disposal and destruction. EPA noted that the new guidance "is not intended to address destruction and disposal of PFAS-containing consumer products, such as non-stick cookware and water-resistant clothing."

PFAS have become a leading issue for the waste industry, which is grappling with their presence in landfills and incinerators, as well as in compost. They enter the waste stream through a wide range of products, like nonstick pans and dental floss. The presence of PFAS in biosolids has been particularly expensive, as municipalities have faced rising costs associated with PFAS in wastewater treatment plants.

David Biderman, president and CEO of the Solid Waste Association of North America, said via email that his organization is "reviewing the proposed Interim Guidance and is likely to submit comments in February 2021."

Environmental groups and some communities have been critical of approaches to PFAS waste disposal, particularly any plans to incinerate PFAS. Earlier this year, the Norlite hazardous waste incinerator in Cohoes, N.Y., came under fire when PFAS associated with AFFF incineration was discovered near the facility. Gov. Andrew Cuomo (D) signed a law last month barring AFFF incineration (Greenwire, Nov. 25).

In a separate incident, EPA canceled a planned study on PFAS incineration meant to take place in Rahway, N.J., following significant public outcry from the local community (Greenwire, Aug. 27). As part of its guidance, EPA notes potential impacts to "vulnerable populations," in acknowledgement of incidents like the one in Rahway.

Judith Enck, former administrator of EPA's New York-based Region 2, described the interim guidance as a "swing and a miss," saying the draft has "serious problems." She expressed concerns about EPA's proposed disposal and destruction methods, saying more research is needed on the risks associated with those practices.

"This report illustrates that EPA does not have that needed data," Enck said. "Consequently, environmental justice communities are at risk."

Olga Naidenko, vice president for science investigations at the Environmental Working Group, expressed similar concerns about the unknowns around risks stemming from PFAS disposal.

"Solving the PFAS disposal problem must include ending nonessential uses and PFAS discharges into the environment outright," she said. "EPA needs to do much more to address this and to stop the environmental injustice of PFAS contamination in communities near the disposal sites."

The White House Office of Management and Budget cleared the interim guidance on Tuesday. Today's posting kicks off a 60-day comment period.

EPA releases guidance on destroying, disposing PFAS and PFAS-containing materials

Adam Redling, Waste Today

<https://www.wastetodaymagazine.com/article/epa-guidance-destroying-disposing-pfas-materials/>

The U.S. Environmental Protection Agency (EPA) released new interim guidance on Dec. 18 on destroying and disposing of certain per- and polyfluoroalkyl substances (PFAS) and PFAS-containing materials. Specifically, the new interim guidance outlines the current science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products, including aqueous film-forming foam for firefighting.

"With this interim guidance, EPA is providing important scientific information on available technologies that can assist with the destruction and disposal of PFAS," EPA Administrator Andrew Wheeler says. "This action is a critical part of our efforts to increase the understanding of PFAS and support our federal, state, tribal and local partners as we address these emerging chemicals of concern."

The interim guidance assembles and consolidates information in a single document that generally describes thermal treatment, landfill and underground injection technologies that may be effective in the destruction or disposal of PFAS and PFAS-containing materials. To help ensure informed decision-making, the technology-specific information describes uncertainties and how those uncertainties should be weighed given situation-specific factors, such as the waste's physical state (liquid, solid, gas).

EPA's ongoing research and development leverages both in-house expertise and external partnerships to help address the knowledge gaps identified in the draft interim guidance. Additionally, there are many current research efforts being coordinated across the federal government to help address PFAS destruction. EPA will incorporate this increased knowledge into future versions of this guidance to help decision-makers choose the most appropriate PFAS disposal options for their particular circumstances.

As required by the National Defense Authorization Act for Fiscal Year 2020 (FY20 NDAA), the interim guidance addresses PFAS and PFAS-containing materials including:

- Aqueous film-forming foam for firefighting.
- Soil and biosolids.
- Textiles, other than consumer goods, treated with PFAS.
- Spent filters, membranes, resins, granular carbon, and other waste from water treatment.
- Landfill leachate containing PFAS.
- Solid, liquid or gas waste streams containing PFAS from facilities manufacturing or using PFAS.

The interim guidance is not intended to address destruction and disposal of PFAS-containing consumer products, such as non-stick cookware and water-resistant clothing.

The agency is also providing guidance on testing and monitoring air, effluent and soil for releases near potential destruction or disposal sites.

EPA will accept comments on the interim guidance for 60 days following publication in the Federal Register. EPA will then consider and incorporate comments, as appropriate, into a revised document. EPA will also review and revise the interim guidance, as appropriate, or at least once every three years.

EPA and Home Depot reach settlement over lead paint renovations

Valeria Negron, Jurist

<https://www.jurist.org/news/2020/12/epa-and-home-depot-reach-settlement-over-lead-paint-renovations/>

The US Department of Justice announced Thursday that the Environmental Protection Agency (EPA) has reached a settlement agreement with Home Depot over its failure to follow rules involving lead paint in renovations.

The complaint was lodged in Atlanta and claimed that Home Depot had violated the Toxic Substances Control Act. According to the complaint, Home Depot was contracted to renovate homes built pre-1978 that needed to be tested for lead paint. Although such renovations needed to be completed by companies certified by the EPA or the state, it was found that Home Depot's crews were improperly trained on how to handle lead paint.

According to the settlement, Home Depot will have to pay \$20,750,000—the largest civil penalty ever imposed under the Act. Utah will receive \$750,000, Massachusetts will receive \$732,000 and Rhode Island will receive \$50,000. Home Depot will also have to implement “a comprehensive, corporate-wide program to ensure that the firms and contractors it hires to perform work are certified and trained to use lead-safe work practices to avoid spreading lead dust and paint chips during home renovation activities.”

As part of that program, Home Depot will have to electronically verify that the persons it hires are certified. It must also provide safety information about lead paint-related renovations to both the people it employs and the customers who intend to do their own renovations. Such safety information will be available on its website, in stores and on YouTube. It will serve to protect clients and their children.

Assistant Administrator for the EPA's Office of Enforcement and Compliance Assurance, Susan Bodine, said:

Today's settlement will significantly reduce children's exposure to lead paint hazards. Home Depot will implement system-wide changes to ensure that contractors who perform work in homes constructed before 1978 are EPA-certified and follow lead-safe practices. EPA expects all renovation companies to ensure their contractors follow these critical laws that protect public health.

The consent decree is subject to public comments for 30 days before it gains final approval.

New York Leads Multistate Lawsuit Against EPA Pesticide Rule Changes

Emilee Larkin, Courthouse News

<https://www.courthousenews.com/new-york-leads-multistate-lawsuit-against-epa-pesticide-rule-changes/>

(CN) — New York officials announced Friday they are leading a coalition of five states in a lawsuit against the Environmental Protection Agency, claiming the agency illegally weakened protections for farmers from pesticides.

“Pesticides are often essential to the preservation of agriculture, but they're also extremely dangerous to the health of farming communities,” New York Attorney General James said in a press release. “Trump's EPA knowingly increased the risk that farmworkers, their families, and others will be exposed to these dangerous chemicals.”

California, Illinois, Maryland and Minnesota are joined in the lawsuit.

The complaint digs at a rule the EPA adopted in October that allows for pesticides to be applied even if farmers or bystanders are within the Application Exclusion Zone.

The new rule allows for anyone not employed by the establishment to be within the AEZ during pesticide application and only allows for AEZ enforcement on the farm's property.

The states argue this strays from the previous rules enacted in 2015 for pesticide protections that required there to be no personnel within the 100-foot circular area of the AEZ while pesticides were being used.

The 33-page lawsuit says that from 1998 to 2011 there were nearly 10,000 reported cases of pesticide related health issues.

Health effects of exposure to pesticides range from skin irritation to impaired vision or seizures.

The EPA justified the changes by saying that it does not violate the "do not contact" rule of the Worker Protection Standards, a rule that is meant to "assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler."

However California Attorney General Xavier Becerra stands firm that the change to the rules is illegal.

"The Trump Administration's decision to undercut existing public health protections for these workers is not only reprehensible — it's illegal. We're going to court to prove it," Becerra said in a press release.

Maryland Attorney General Brian Frosh also expressed his distaste for the rule change.

"It is EPA's job to protect farmworkers, their families and others who are exposed to pesticides," Frosh said in a press release. "These regulations prioritize killing bugs over protecting people."

The EPA has most recently faced pushback for its failure to ban certain pesticides, such as chlorpyrifos, which many states have banned, including California. The EPA opted to allow the pesticide to be used on commercial crops last year per an order from the Ninth Circuit.

Earlier this month it announced new rules for using chlorpyrifos, which is particularly toxic to children, calling for more protective gear to be worn by those using it.

The EPA declined to comment on the suit, noting they do not comment on pending litigation.

Home Depot Beats Consumer Suit Over Roundup Risk Warning

Julie Steinberg, Bloomberg

https://news.bloomberglaw.com/environment-and-energy/home-depot-beats-consumer-suit-over-roundup-risk-warning?usertype=External&bwid=00000176-7626-dfb7-a7f7-f7ee1a490001&qid=7030733&cti=FGOV&uc=13200000080&et=NEWSLETTER&emc=neve_nl%3A58&source=newsletter&item=headline®ion=digest&access-ticket=eyJjdHh0IjoITkVWRSlSmkljoiMDAwMDAxNzYtNzYyNi1kZmI3LWE3ZjctZjdIZTFhNDkwMDAxliwic2lnIjoIRzFhVll4ZjhLTUhBU3JiaDJmK3dlZnhusINJPSIsInRpbWUiOiIxNjA4NTUyMzI4IiwidXVpZCI6IjBWOVkvbKfkd0VJYmxoRS9Eb1JBZHc9PVQxNGJsQ1grMjV4aWJaQ0VhS3lPaXc9PSIsInYiOiIxIn0%3D

- Lawsuit challenged lack of general Roundup warnings
- No viable claim independent of Proposition 65

Home Depot USA Inc. shed a would-be class suit alleging it failed to warn consumers that the weedkiller Roundup can cause cancer, as a California federal court held a consumer protection law claim doesn't exist separate from the state's Proposition 65 right-to-know law.

James Weeks's theory that Home Depot had a duty to warn about the overall cancer risks of Roundup "stretches the limit of what constitutes unfair business dealings," the U.S. District Court for the Central District of California said in an order entered Thursday.

Weeks chose not to bring his claim under Prop 65, which governs exposure to known carcinogens in California and covers claims related to Roundup's active ingredient, glyphosate, "likely to avoid its stringent notice requirements," the court said.

Weeks said he wasn't contesting the retailer's alleged failure to post glyphosate warnings. Rather, he said Home Depot failed to post warnings about the carcinogenic properties of Roundup as a whole. Prop 65 doesn't cover the combination of glyphosate and another ingredient, polyethoxylated tallow amine, Weeks said.

But California hasn't recognized Roundup's formula of glyphosate and POEA as a carcinogen separate from glyphosate alone because little data supports that the two pose differing cancer risks when combined, the court said.

"Mr. Weeks is stuck between a rock and a hard place," it said.

"If he claims that it is glyphosate that is toxic, then he must bring the claim under Proposition 65," it said. "But if he claims that glyphosate and POEA together are toxic in a different way, then he does not have the scientific support to demonstrate that Home Depot has acted unfairly."

This action "attempts so strenuously to distinguish itself" from the reach of a mass tort against Roundup's manufacturers and the procedural requirements of Prop 65, while seeking to recover on essentially the same facts, "that it fails to state a claim at all," the court said.

Other California federal courts also have said plaintiffs can't plead around Proposition 65's pre-suit notice requirement by characterizing a claim as one under the state's Unfair Competition law, Judge John W. Holcomb said.

Milstein Jackson Fairchild and Wade LLP represented Weeks. Umberg Zipser LLP and King & Spalding LLP represented Home Depot.

The case is Weeks v. Home Depot U.S.A., Inc., C.D. Cal., No. 2:19-cv-06780, entered 12/17/20.

HELM Agro US Granted EPA Approval for Katagon Corn Herbicide

Crop Life

<https://www.croplife.com/crop-inputs/herbicides/helm-agro-us-granted-epa-approval-for-katagon-corn-herbicide/>

HELM Agro US, Inc. has announced that Katagon herbicide has received federal registration from the U.S. EPA.

Katagon is a next-generation HPPD premix herbicide for postemergence use in field corn, offering two modes of action with the added benefits of a low use rate formulation, crop safety profile, and a wide application window.

A co-formulation of the active ingredients tolpyralate and nicosulfuron, Katagon delivers highly effective control of broadleaf weeds plus enhanced grass control when used in combination with atrazine.

Katagon and atrazine together in a tank mix also provides residual activity for longer-lasting weed control performance.

Katagon was developed by Ishihara Sangyo Kaisha, Ltd. Earlier this year, HELM Agro US and ISK Biosciences Corporation, a subsidiary of Ishihara Sangyo Kaisha, Ltd., agreed to collaborate regarding the distribution of Katagon herbicide for the U.S. crop protection market.

Flexibility That Fits

Katagon is labeled for use in field corn grown for grain, silage and seed, that are herbicide-resistant, conventional or non-GMO hybrids.

In product development trials, Katagon has demonstrated high performance ratings in crop safety and postemergence control of glyphosate, PPO, triazine and ALS-resistant weeds like Palmer amaranth, waterhemp, ragweed, lambsquarters and foxtails.

According to Dave Schumacher, President of HELM Agro US, Katagon's unique co-formulation of tolpyralate and nicosulfuron is the first of its kind in the U.S.

"In field trials, we've seen Katagon perform equal to if not better than several market leading post products on broadleaves and stubborn grasses," says Schumacher. "Katagon is an ideal solution to help break the cycle of resistance without limiting growers' ability to rotate to soybeans the following season."

Market-Ready for 2021

Available to corn growers for the 2021 season, Katagon is classified as a Group 27 and Group 2 herbicide with a use rate of 2.3 to 3.4 fluid ounces per acre. It can be applied by itself or in combination with atrazine as an early to mid-season postemergence treatment.

When used alone, Katagon can be applied on corn up to 20-inches tall or the V5 growth stage, whichever is most restrictive. Post applications that include atrazine can be applied to corn up to 12-inches tall. In a tank mix with Katagon, the maximum single application rate for atrazine is 2.0 pounds per acre and not to exceed 2.5 pounds of atrazine per acre per year.

Katagon is formulated as an oil dispersion containing one pound of tolpyralate per gallon and one pound of nicosulfuron per gallon. With a low use rate, Katagon provides greater cost savings for grower and retailer alike, reducing container size, application rates, labor and transportation expenses.

According to Schumacher, corn growers will be encouraged to use Katagon as part of a two-pass sequential weed control program to ensure three or more modes of actions are used within a single growing season, and in accordance with university recommendations and industry standards for weed resistance management.

"Katagon is another example of how HELM is bringing new technology to market that addresses the ever-changing needs of growers," says Schumacher. "Katagon is a total package solution that helps growers overcome resistance issues with the end result in driving up yield potential and profitability."

Rising Temperatures Has Rendered Widely Used Herbicides to Struggle Killing Superweeds, Experts Suggests

Erika P, The Science Times

<https://www.sciencetimes.com/articles/28739/20201221/rising-temperatures-rendered-widely-used-herbicides-struggle-killing-superweeds-experts.htm>

Herbicides are chemicals used to kill weeds in gardens and lawns, but their effectiveness could also vary in the weeds' age and the weather it is applied.

According to SFGate, young weeds are easier affected by herbicides than older weeds. Rainfall can wash away herbicides, making it less effective to kill the weeds, while very dry weather can cause the herbicides to evaporate even before it penetrates the leaves.

In that sense, herbicides can be affected by light. Some easily break down under bright light, so it is advisable to apply these herbicides only in the evening. But low temperatures and high winds could also reduce herbicide uptake.

In general, herbicide experts have seen a decline in the performance of the commonly used herbicides against weeds in the past decade. Phillip Stahlman, then a weed scientist at Kansas State University, said the changes in the herbicides' effectiveness could be due to the rising temperatures.

According to Wired, farmers in the past do not usually rely on herbicides on dealing with the weeds as they were using laborious methods, like manual removal and tilling. But in the 1990s, biotechnology has started making genetically engineered plants, which are resistant to herbicides, that allowed farmers to spray agrochemicals to kill the weeds without harming their crops.

But like many organisms, the weeds too evolved into protecting themselves from herbicides, which led to the creation of a variety of herbicides. It has then started the battle between the farmers and the weeds, like adding additional doses to kill the weeds.

Rising Temperatures Affect Herbicide Performance

Stahlman's experience with Kochia weeds in his research fields has led him to wonder whether the rising temperatures could have affected the performance of the two commonly used herbicides, glyphosate and dicamba. He teamed up with weed physiologist Mithila Jugulam and research assistant Junjun Ou, both from KSU.

They found that they needed to apply more than twice the amount of glyphosate and dicamba to control the weeds' growth during high temperatures.

Moreover, they discovered that the weeds tend to absorb less glyphosate at higher temperatures. Jugulam thinks that high temperatures may have encouraged the weeds to develop thicker cuticles, which boost their defenses.

Meanwhile, the temperatures did not affect the amount of dicamba absorbed, but it hindered the chemical's movements through the plant, making it harder to reach its target.

Herbicide Resistance Might Worsen Over the Coming Years

Experts fear that herbicide resistance will worsen over the coming years due to climate change. The United States, for example, has been experiencing rising temperatures that are above 90 degrees Fahrenheit during the growing seasons. These states are vital for the country because they are the major food suppliers, being an agricultural region.

Furthermore, researchers say that the problems on herbicide-resistant weeds have come to light now due to the frequent episodes of extreme heat over the past decades.

Although some scientists do not think that experiments done in controlled conditions can be true to the real-life setting, many still believed that this could pose significant problems in the next years to come.

COVID-19 Vaccine Could Be Less Effective In People With High PFAS Levels In Blood

Patch Colorado Newsline

<https://patch.com/colorado/across-co/covid-19-vaccine-could-be-less-effective-people-high-pfas-levels-blood>

The COVID-19 vaccine could be less effective in people with high levels of perfluorinated compounds — PFAS — in their blood, several scientists announced Thursday.

High levels of PFAS exposure is known to be linked to a "plethora of adverse health effects," including immune system disorders, said Linda Birnbaum, a toxicologist and former director of the National Institute for Environmental Health Science.

That means people with high levels of PFAS in their blood could have a weaker response to the COVID-19 vaccine, and build up fewer antibodies to the vaccine.

"It's not that you won't get any response, but that it could be decreased," Birnbaum said.

The scientists on the press call, hosted by the Environmental Working Group, emphasized that people should still get the vaccine, currently given in two doses. After those doses, people can be tested to determine their level of antibodies; if those levels are low, a third booster could be necessary, Birnbaum said.

There are more than 5,000 types of PFAS, all of them produced by industry. Known as "forever chemicals" because they don't break down in the environment, the compounds are found worldwide in drinking water, surface water and in human blood. The sources are myriad: fast food wrappers, personal care products, cosmetics, carpet, water-resistant fabrics, firefighting foam and more.

PFAS is said to have contaminated drinking water in several Colorado communities. In 2015, the communities of Widefield, Fountain and Security in El Paso County detected levels of contamination in drinking water well above federal limits. The Colorado Legislature this year passed two bills related to PFAS protections — one bill created a fund to help communities detect and clean up PFAS contamination and another bill created a registration program for facilities and fire departments that have substances containing PFAS on site.

In addition to immune disorders, PFAS has been linked to higher rates of thyroid disease, cancer, obesity, Type II diabetes, as well as harm to the developing brain and reproductive disorders.

Research so far has determined that people with PFAS blood levels above 22.5 parts per billion could have more health problems related to the compounds than people with less exposure, including a depressed immune response.

"It doesn't mean that they will all get sick, but that they have a higher risk," said Jamie DeWitt, a toxicologist and associate professor at East Carolina University who has done extensive research on the compounds and human health.

The median blood level in the U.S. population is 5 parts per billion. However, some residents in particularly polluted areas have blood levels above the national median.

A study of Danish people with COVID-19 showed that those with higher levels of a type of perfluorinated compound, PFBA, in their blood suffered more severe reactions from the virus, as well as a higher death rate.

"This is a real risk," DeWitt said. "We want people to get vaccinated, to give their immune system an additional tool to fight."

Under the Trump administration, EPA leadership has delayed any meaningful regulations of these compounds. The Biden administration has included PFAS in its environmental justice plan, said Melanie Benesh, a legislative attorney with the Environmental Working Group.

This includes regulating PFAS under Superfund law, which would label the compounds as hazardous substances. This would require industry to report the release of the chemicals and allow the EPA to sue violators and hold them financially responsible for clean ups.

The Biden administration also has said it would set a legally enforceable standard for PFAS in drinking water. Currently, the EPA has only set a health advisory recommendation of 70 parts per trillion in drinking water, a level that several states, such as New Hampshire, are rejecting as being too lax.

EPA Announces New Policy for Registrants Voluntarily to Disclose Inert Ingredients in Antimicrobial Products

Lisa M. Campbell, Heather F. Collins & Barbara A. Christianson, Bergeson & Campbell Pesticide Blog

<http://pesticideblog.lawbc.com/entry/epa-announces-new-policy-for-registrants-voluntarily-to-disclose-inert-ingr>

On December 10, 2020, the U.S. Environmental Protection Agency (EPA) announced a new policy that will allow registrants of antimicrobial pesticide products voluntarily to disclose all inert ingredients more efficiently in response to the request of retailers, states, and industry.

Registrants who wish to disclose all inert ingredient can choose to do so in three ways under the new policy:

- On the product label as part of the full ingredient statement or on the product's back or side panel with a referral to the full ingredient statement;
- On a website referenced on the product label; or
- On a website that is not directly linked to the product label.

EPA states that it will allow registrants to use alternate nomenclature to disclose inert ingredients. This policy is effective as of January 16, 2021.

EPA states that there is no statutory or regulatory requirement to identify inert ingredients in the ingredient statement, except when EPA determines that such inert ingredients may pose a hazard to humans or the environment. EPA states that if EPA determines an inert ingredient may pose a hazard, EPA may determine that the name of the inert ingredient must be listed in the ingredient statement on a case-by-case basis for either risk-based or hazard-based reasons. Examples include the following ingredients:

- Petroleum distillates, xylene, or xylene range aromatic solvents > 10%;
- Sodium nitrate > 0.1%; or
- Inert ingredients of toxicological concern (formerly known as "List 1 Inerts").

EPA's long-standing policy, as stated in its Label Review Manual, has been that "if a registrant wants to list a particular inert ingredient in the ingredient statement, the registrant should list all inert ingredients directly below the ingredient statement in descending order by weight. A partial listing on the label could be misleading." EPA's new policy applies to voluntary identification of inert ingredients using alternate nomenclature and not to cases where EPA directs registrants to list particular inert ingredients because of risk-based or hazard-based reasons.

EPA states that beginning December 15, 2020, the Office of Pesticide Programs (OPP) will review antimicrobial pesticide applications for voluntary inert ingredient disclosure. Under this new process, EPA states that if a registrant chooses to utilize alternate chemical nomenclature on its product labeling, the registrant must resubmit the Confidential Statement of Formula (CSF) containing the inert ingredient as approved on the existing formulation as well as the alternate chemical nomenclature. EPA requires that a "crosswalk" between the approved nomenclature of the CSF and the alternate nomenclature be provided with the registrants' non-Pesticide Registration Improvement Extension Act (PRIA 4) application, which will fall under a 90-day review.

If registrants choose to use alternate nomenclature, EPA encourages using the following sources:

- EPA Inerts List;
- International Union of Pure and Applied Chemistry (IUPAC);
- Chemical Abstracts Service (CAS); or
- Consumer Product Ingredient Database Directory.

If a registrant chooses to disclose voluntarily inert ingredients on the label, the registrant should list all of the inert ingredients directly below the ingredient statement in descending order by weight, so that the list does not interfere with the required labeling information. If space is limited, however, to avoid crowding of required labeling information, a referral statement may be used directing the reader to the back or side panel for the full list of inert ingredients in descending order by weight. The referral statement should be placed directly below the ingredient statement with an asterisk or some other equivalent symbol connecting the "Inert Ingredients" or "Other Ingredients" heading in the ingredient statement with the full list of inert ingredients placed on the back or side panel of the label. For example, an acceptable referral statement is "*See back panel for complete inert ingredient statement," and acceptable corresponding text on the back panel is "*Inert Ingredients: Inert A, Inert B., etc."

When registrants choose to add a website address or quick response (QR) code to their labeling that leads to inert ingredient information, EPA asks that registrants, in a cover letter transmitting the labeling amendment application, self-certify that the inert ingredient information provided on the registrant's website(s) and in other marketing materials is consistent with the information provided on the latest approved CSF.

EPA states that registrants do not need to amend its their master label or notify EPA before adding an inert ingredient statement to a website, provided that the site is not referenced on the product label. In such cases, the application process outlined below does not apply.

EPA states that no other actions should be included with inert ingredient disclosure applications. The following information is required to be included in the application:

- Applications to add alternate nomenclature to the label must:
 - Crosswalk link the current CSF nomenclature to any alternate nomenclature as confirmation that the current CSF nomenclature and alternate nomenclature are synonyms of each other (the exact same inert ingredient). EPA provides a template spreadsheet for the alternate nomenclature crosswalk to link the current CSF nomenclature to any alternate inert ingredient nomenclature.
 - Identify in the cover letter the proposed changes to the alternate nomenclature on product labels and CSFs, the revised CSF (which includes the current and alternate nomenclature) and master label with changes highlighted.
 - For applications to add currently approved nomenclature to the label registrants should include with the application a cover letter identifying the proposed change(s) on product labels and master label with changes highlighted, including the following self-certification statement: "The inert ingredients voluntarily disclosed in the labeling for EPA Registration No. [add registration number], are accurate for the EPA-registered product listed above. No changes to the product formulation have been made. I certify that no other changes have been made to the labeling of this product. I understand that it is a violation of 18 U.S.C. 1001 to willfully make any false statement to EPA. I further understand that if the information I have provided is misbranded as defined in section 2(q) of FIFRA, 7 U.S.C. 136(q), this product may be in violation of FIFRA and EPA may pursue enforcement actions under sections 12 and 14 of FIFRA, 7 U.S.C. 136(j) and 136(l)."
- For applications to add or change a website or QR code to include inert information, applicants must include a cover letter that identifies the proposed change(s) on product labels and master label with changes highlighted, including the following self-certification statement: "The inert ingredients voluntarily disclosed in the labeling for EPA Registration No. [add registration number], are accurate for the EPA-registered product listed above. No changes to the product formulation have been made. I certify that no other changes have been made to the labeling of this product. I understand that it is a violation of 18 U.S.C. 1001 to willfully make any false statement to EPA. I further understand that if the information I have provided is misbranded as defined in section 2(q) of FIFRA, 7 U.S.C. 136(q), this product may be in violation of FIFRA and EPA may pursue enforcement actions under sections 12 and 14 of FIFRA, 7 U.S.C. 136(j) and 136(l)."

According to EPA, the scope of this policy is currently limited to antimicrobial pesticide products. EPA states that it may consider expanding to conventional pesticide and biopesticide products in the future.

Additional information is available [here](#).

Comments on Draft Compliance Guide Addressing Surface Coatings under PFAS SNUR Due January 15

Lynn L. Bergeson & Carla N Hutton, Bergeson & Campbell TSCA Blog

<http://www.tscablog.com/entry/comments-on-draft-compliance-guide-addressing-surface-coatings-under-pfas-s>

On December 16, 2020, the U.S. Environmental Protection Agency (EPA) announced the availability of a draft compliance guide that outlines which imported articles are covered by EPA's July 2020 final significant new use rule (SNUR) that prohibits companies from manufacturing, importing, processing, or using certain long-chain per- and polyfluoroalkyl substances (PFAS) without prior EPA review and approval. 85 FR 81466. The draft guide will be "the

official compliance guide for imported articles that may contain long-chain perfluoroalkyl carboxylate chemical substances as part of a surface coating.” Specifically, the guide provides additional clarity on what is meant by a “surface coating,” identifies which entities are regulated, describes the activities that are required or prohibited, and summarizes the notification requirements of the final SNUR. More information on the draft compliance guide is available in our December 14, 2020, memorandum, “EPA Publishes Draft Compliance Guide Addressing Surface Coatings under PFAS SNUR.” Comments on the draft guide are due January 15, 2021.

EPA Announces New Policy for Registrants Voluntarily to Disclose Inert Ingredients in Antimicrobial Products

Lisa M. Campbell & Heather F. Collins, The National Law Review (Bergeson & Campbell)

<https://www.natlawreview.com/article/epa-announces-new-policy-registrants-voluntarily-to-disclose-inert-ingredients>

On December 10, 2020, the U.S. Environmental Protection Agency (EPA) announced a new policy that will allow registrants of antimicrobial pesticide products voluntarily to disclose all inert ingredients more efficiently in response to the request of retailers, states, and industry.

Registrants who wish to disclose all inert ingredient can choose to do so in three ways under the new policy:

- On the product label as part of the full ingredient statement or on the product’s back or side panel with a referral to the full ingredient statement;
- On a website referenced on the product label; or
- On a website that is not directly linked to the product label.

EPA states that it will allow registrants to use alternate nomenclature to disclose inert ingredients. This policy is effective as of January 16, 2021.

EPA states that there is no statutory or regulatory requirement to identify inert ingredients in the ingredient statement, except when EPA determines that such inert ingredients may pose a hazard to humans or the environment. EPA states that if EPA determines an inert ingredient may pose a hazard, EPA may determine that the name of the inert ingredient must be listed in the ingredient statement on a case-by-case basis for either risk-based or hazard-based reasons. Examples include the following ingredients:

- Petroleum distillates, xylene, or xylene range aromatic solvents > 10%;
- Sodium nitrate > 0.1%; or
- Inert ingredients of toxicological concern (formerly known as “List 1 Inerts”).

EPA’s long-standing policy, as stated in its Label Review Manual, has been that “if a registrant wants to list a particular inert ingredient in the ingredient statement, the registrant should list all inert ingredients directly below the ingredient statement in descending order by weight. A partial listing on the label could be misleading.” EPA’s new policy applies to voluntary identification of inert ingredients using alternate nomenclature and not to cases where EPA directs registrants to list particular inert ingredients because of risk-based or hazard-based reasons.

EPA states that beginning December 15, 2020, the Office of Pesticide Programs (OPP) will review antimicrobial pesticide applications for voluntary inert ingredient disclosure. Under this new process, EPA states that if a registrant chooses to utilize alternate chemical nomenclature on its product labeling, the registrant must resubmit the Confidential Statement of Formula (CSF) containing the inert ingredient as approved on the existing formulation as well as the alternate chemical nomenclature. EPA requires that a “crosswalk” between the approved nomenclature of the CSF and the alternate nomenclature be provided with the registrants’ non-Pesticide Registration Improvement Extension Act (PRIA 4) application, which will fall under a 90-day review.

If registrants choose to use alternate nomenclature, EPA encourages using the following sources:

- EPA Inerts List;
- International Union of Pure and Applied Chemistry (IUPAC);
- Chemical Abstracts Service (CAS); or
- Consumer Product Ingredient Database Directory.

If a registrant chooses to disclose voluntarily inert ingredients on the label, the registrant should list all of the inert ingredients directly below the ingredient statement in descending order by weight, so that the list does not interfere with the required labeling information. If space is limited, however, to avoid crowding of required labeling information, a referral statement may be used directing the reader to the back or side panel for the full list of inert ingredients in descending order by weight. The referral statement should be placed directly below the ingredient statement with an asterisk or some other equivalent symbol connecting the “Inert Ingredients” or “Other Ingredients” heading in the ingredient statement with the full list of inert ingredients placed on the back or side panel of the label. For example, an acceptable referral statement is “*See back panel for complete inert ingredient statement,” and acceptable corresponding text on the back panel is “*Inert Ingredients: Inert A, Inert B., etc.”

When registrants choose to add a website address or quick response (QR) code to their labeling that leads to inert ingredient information, EPA asks that registrants, in a cover letter transmitting the labeling amendment application, self-certify that the inert ingredient information provided on the registrant’s website(s) and in other marketing materials is consistent with the information provided on the latest approved CSF.

EPA states that registrants do not need to amend its their master label or notify EPA before adding an inert ingredient statement to a website, provided that the site is not referenced on the product label. In such cases, the application process outlined below does not apply.

EPA states that no other actions should be included with inert ingredient disclosure applications. The following information is required to be included in the application:

- Applications to add alternate nomenclature to the label must:
 - Crosswalk link the current CSF nomenclature to any alternate nomenclature as confirmation that the current CSF nomenclature and alternate nomenclature are synonyms of each other (the exact same inert ingredient). EPA provides a template spreadsheet for the alternate nomenclature crosswalk to link the current CSF nomenclature to any alternate inert ingredient nomenclature.
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- For applications to add or change a website or QR code to include inert information, applicants must include a cover letter that identifies the proposed change(s) on product labels and master label with changes highlighted, including the following self-certification statement: “The inert ingredients voluntarily disclosed in the labeling for EPA Registration No. [add registration number], are accurate for the EPA-registered product listed above. No changes to the product formulation have been made. I certify that no other changes have been made to the labeling of this product. I understand that it is a violation of 18 U.S.C. 1001 to willfully make any false statement to EPA. I further understand that if the information I have provided is misbranded as defined in section 2(q) of FIFRA, 7 U.S.C. 136(q), this product may be in violation of FIFRA and EPA may pursue enforcement actions under sections 12 and 14 of FIFRA, 7 U.S.C. 136(j) and 136(l).”

According to EPA, the scope of this policy is currently limited to antimicrobial pesticide products. EPA states that it may consider expanding to conventional pesticide and biopesticide products in the future.

Additional information is available [here](#).

Now Is the Time for Companies to Prepare for EPA's Final Rules to Restrict Certain PBT Chemicals

Erik Baptist, JD Supra (Wiley Rein)

<https://www.jdsupra.com/legalnews/now-is-the-time-for-companies-to-59356/>

With bans on the manufacturing, processing, distribution, and sale of certain chemicals scheduled to take effect in the coming months, companies should start preparing now for these prohibitions either to ensure that their products do not contain these chemicals or to design a smooth transition plan for those that do. Specifically, this month, the U.S. Environmental Protection Agency (EPA) must issue its final rules addressing five chemicals that qualify as being persistent, bioaccumulative, and toxic (PBT) under section 6(h) of the Toxic Substances Control Act (TSCA).

The following five chemicals are subject to EPA's final rules: decabromodiphenyl ethers (DecaBDE); phenol, isopropylated, phosphate (3:1) (PIP (3:1)); 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP); pentachlorothiophenol (PCTP); and hexachlorobutadiene (HCBD). We have previously written about EPA's proposed PBT rulemaking here and here.

With limited exceptions, EPA has proposed to ban or significantly restrict the manufacturing, processing, distributing, and sale of four of these five chemicals—including products and parts containing these chemicals—effective merely 60 days after publication of the final rules in the Federal Register.^[1] Therefore, companies whose product lines need more than 2 months to go through the chain of distribution and off the store shelves to their end-user consumers will need to start preparing for these upcoming prohibitions and restrictions now.

[1] Given the number of times EPA has changed direction on the first 10 risk evaluation chemicals, we would not be surprised to see a final rule that includes some regulation of HCBD, even though EPA initially proposed not to issue any restrictions on the chemical substance.

Stop EPA from Limiting State Pesticide Restrictions as Corporate Deception on Hazards Reported

Beyond Pesticides Blog

<https://beyondpesticides.org/dailynewsblog/2020/12/stop-epa-from-limiting-state-pesticide-restrictions-as-corporate-deception-on-hazards-reported/>

The toxic herbicide dicamba is once again at the center of a larger story about states' authority to regulate pesticides more stringently than federal dictates and a response to corporate corruption in the marketing of pesticide products. The Trump EPA (U.S. Environmental Protection Agency) has just made it much harder for state regulations to be more protective than federal rules. It did so via a footnote embedded in dozens of pages of regulatory documents related to EPA's registration of three new dicamba products.

Meanwhile, a report by the Midwest Center for Investigative Reporting found Monsanto and BASF, a German chemical company that worked with Monsanto to launch the system coupling dicamba with resistant crops, knew their dicamba herbicides would cause large-scale damage to fields across the U.S., but decided to push them on unsuspecting farmers anyway, in a bid to corner the soybean and cotton markets with their dicamba-resistant seeds.

For nearly 30 years, state regulators have used Section 24 ("Special Local Needs" section) of FIFRA, the Federal Insecticide, Fungicide and Rodenticide Act—the law that gives EPA authority to regulate pesticides—to establish specific restrictions, on use of federally registered pesticide products, that go beyond the restrictions mandated by EPA. Like other federal laws, FIFRA allows states room for stronger regulation. EPA has long allowed states to add to the edicts of federal pesticide labels in order to protect workers, crops, and/or the environment under particular local circumstances. However, Section 24 had historically been used to expand allowed labeled uses of pesticides when existing products with their crop restrictions are no longer effective.

Two subsections of Section 24 are at issue. Section 24(a) allows states to "regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act." Section 24(c) allows states to "provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes

of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator.”

Although a straightforward reading of FIFRA leads to the conclusion—one that EPA is now supporting—that 24(a) should be used to limit a pesticide’s use, and 24(c) to expand uses, EPA has never issued regulations or guidance for the application of 24(a) and has historically directed states to 24(c) when they sought to restrict a pesticide’s use, as several states have done with dicamba. For several decades, EPA has construed 24(c) to mean that states can establish more-restrictive regulations than the federal. Indeed, in 1996, it published this as guidance for states. In the past few years, especially, as EPA has failed to enact constraints on the uses of dicamba, which has caused massive devastation to nontarget crops and trees (as well as to wildlife), many states have moved to establish additional controls on the pesticide’s use.

Since EPA has never published regulations or guidance concerning use of Section 24(a), it is clear that the current action is designed to limit the ability of states to restrict the use of pesticides when EPA has failed to ensure safety.

A number of states, including Indiana, Minnesota, Missouri, South Dakota, North Dakota, Illinois, and Arkansas, have instituted restrictions on dicamba use that surpass those accompanying the federal registration of the compound. Texas, Iowa, Georgia, Kentucky, Alabama, and North Carolina are all eyeing 24(c) requests for stricter-than-federal controls for tighter application windows, additional training requirements, better record keeping, new fine structures for violations, and other modifications of the federal label.

This new (and stealthily announced) EPA impediment to states’ ability to create additional constraints hinges on the agency’s decision to reinterpret what states can do under Section 24(c) of FIFRA. EPA confirmed that the subject footnote represents an official policy change, saying, “EPA has determined that moving forward, EPA may disapprove any state registrations under FIFRA section 24(c) that further restrict use of pesticides registered by EPA, regardless of the chemicals involved. If a state wishes to further restrict use of a pesticide, they must do so under section 24(a) of FIFRA.”

Although some have interpreted this change to mean that state regulators will now have to navigate state legislative or rulemaking processes to use Section 24(a) in order to enact such protections, EPA has not adopted regulations or guidance for implementation of 24(a), so it appears that it is up to states to decide how to use it, as with dicamba, to control the timing, nature, location, or quantity of applications of the pesticide in efforts to diminish the damage it causes to nontarget plants and organisms. In addition, this reversal by EPA overturns decades of precedent, and as Progressive Farmer reports, “breaks EPA’s past promises to the states and threatens to damage the longstanding cooperative relationship between federal and state regulators.”

Although EPA did foreshadow this change in March 2019, state regulators are feeling blindsided. Back then, EPA announced — during one wave of state additions to federal labels on dicamba — that it might alter its handling of states’ requests to enact stricter controls, claiming that the actual language of 24(c) allows states only to permit additional uses of a federally registered pesticide.

EPA said at the time, “Due to the fact that section 24(a) allows states to regulate the use of any federally registered pesticide, and the fact that some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests.” State regulators reacted to this announcement with great concern: officials from 10 different states urged EPA not to adopt the policy change, as did the National Association of State Departments of Agriculture and the Association of American Pesticide Control Officials (AAPCO).

Here’s where the blindsiding arises: EPA Office of Pesticide Programs director Rick Keigwin said, alongside the 2019 announcement, that no changes would be made to the agency’s 24(c) interpretation without the input of state regulators. “Before adopting any changes in this regard, we will solicit public comment on our proposed new approaches,” he wrote in the spring and summer of 2019. “We look forward to a robust public dialogue with our stakeholders, partners and co-regulators on this matter.”

But that did not happen, state regulators report. “There was no public comment period, no consultation,” said Leo Reed, an Indiana pesticide regulator and president of AAPCO. The existing guidance on 24(c) remains on the EPA website, creating confusion and a “legal limbo” for state regulators. Brook Duer, a staff attorney at Penn State’s Center for Agricultural and Shale Law, opined that even if the literal text of 24(c) comports with EPA’s new interpretation, the decades-old, published interpretation and guidance represent a “binding norm” under federal administrative law. He commented: “So unilaterally reversing it through a footnote, without a more transparent and public process—like what EPA previously represented would be undertaken—is certainly unorthodox and may even create the basis for litigation to prevent the reversal.”

Despite controversy over the rights of local governments to set stricter limits on pesticide use, there is not controversy over the legal rights of states to do so. In fact, some states—most notably California—have extensive pesticide regulatory programs. Since EPA has allowed the blatant abuse by Monsanto/BASF—in purposely using drift damage to force farmers to buy its seeds—states must be allowed to protect their citizens and environment when EPA fails.

Tell the Biden transition team that EPA must respect states’ rights to protect people and property in their states.

Letter to EPA Transition Team

In view of the many steps backwards taken by the Trump EPA, it is important to preserve the rights of states to issue more stringent regulations. The Trump EPA has just made it much harder for states to be more protective than EPA—via a footnote embedded in dozens of pages of regulatory documents related to EPA’s registration of three new dicamba weed killer products. This change hurts farmers and consumers.

For nearly 30 years, state regulators have used Section 24 of FIFRA, the Federal Insecticide, Fungicide and Rodenticide Act to establish specific restrictions on use of federally registered pesticide products that go beyond those mandated by EPA. Like other federal laws, FIFRA allows states room for stronger regulation. EPA has long allowed states to add to the edicts of federal pesticide labels in order to protect workers, crops, and/or the environment under particular local circumstances.

Two subsections of Section 24 are at issue. Section 24(a) allows states to “regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.” Section 24(c) allows states to “provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator.”

Although a straightforward reading of FIFRA leads to the conclusion—one that EPA is now supporting—that 24(a) should be used to limit a pesticide’s use, and 24(c) to expand uses, EPA has never issued regulations or guidance for the application of 24(a) and has historically directed states to 24(c) when they sought to restrict a pesticide’s use, as several states have done with dicamba due to widespread crop damage associated with the herbicide’s use. In the past few years, as EPA has failed to enact constraints on the uses of dicamba, which has caused massive devastation to nontarget crops, trees, and wildlife, many states have moved to establish additional controls on its use.

Since EPA has never published regulations or guidance concerning use of Section 24(a), it is clear that the current action is designed to limit the ability of states to restrict the use of pesticides when EPA has failed to ensure safety. Meanwhile, it has been disclosed that Monsanto and BASF, partners in developing the system coupling dicamba with herbicide-tolerant crops, knew their dicamba herbicides would cause large-scale damage to fields across the United States, but decided to push them on unsuspecting farmers anyway, in a bid to corner the soybean and cotton markets with their dicamba-resistant seeds.

Several states, including IN, MN, MO, SD, ND, IL, and AR, have instituted restrictions on dicamba use that surpass federal registration requirements. TX, IA, GA, KY, AL, and NC are all eyeing 24(c) requests for tighter application windows,

additional training requirements, better record keeping, new fine structures for violations, and other modifications of the federal label.

This new (and stealthily announced) EPA impediment to states' ability to create additional constraints hinges on the agency's decision to reinterpret what states can do under Section 24(c) of FIFRA. EPA confirmed that the subject footnote represents an official policy change, saying, "EPA has determined that moving forward, EPA may disapprove any state registrations under FIFRA section 24(c) that further restrict use of pesticides registered by EPA, regardless of the chemicals involved. If a state wishes to further restrict use of a pesticide, they must do so under section 24(a) of FIFRA."

I urge you, in making the move to a revitalized EPA, to ensure that states have the right to issue stronger protections for their farming communities.

Thank you.

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